not a stockholder in the corporation; that there was fraud or collusion between the plaintiff and the corporation; and that the judgment against the corporation was invalid because of fraud, want of jurisdiction, or any other reason that would serve as good grounds for setting aside the judgment in equity.[15]

Clarkson v. Moir[16] furnishes little guide as to the future solution of these problems in this state. It contains, however, a dictum to the effect that the stockholder's only defenses are: that he is not a stockholder as alleged, that he has a valid right to set-off against the corporation, or that he has some other personal defense. Although there is nothing in the opinion of the court to indicate that in a proper case the usual defenses in cases of res judicata, such as collusion, fraud, want of jurisdiction, etc., would be allowed, this may probably be assumed.

MASTER AND SERVANT: LIABILITY OF EMPLOYER FOR NEGLIGENCE OF EMPLOYED PHYSICIAN IN TREATMENT OF INJURED EMPLOYEE—A corporation with a large number of employees retained physicians and maintained a hospital service for the treatment of such of its employees as might be in need thereof. In order to provide for the necessary expense, regular fixed deductions were made from the employees' pay, the fund so accruing being administered by the employing corporation as a part of its own moneys. An employee, injured while at his work, was negligently treated by one of the company's physicians, and died as a result. Should the employer be liable in damages for the negligence of the doctor?

Although a considerable number of large corporations, operating in California, maintain hospital organizations financed in this manner, this question had never reached final decision in the appellate courts of this state until the case of *Bowman v. Southern Pacific Company*.[1] It has, however, been the subject of comment and decision in many other jurisdictions, and varying shades of opinion are presented.

On their facts, cases under the general heading may be said to fall into three classes.[2] In the first class are those corporations which maintain a hospital service for their employees supported entirely out of the employers' treasuries. Authorities[3] are in sub-

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[15] 3 Clarke & Marshall on Private Corporations, § 824. Northern Pacific Railway Company v. Crowell (1917) 245 Fed. 668; Ball v. Warrington (1901) 108 Fed. 472, 47 C. C. A. 447; Butcher v. J. I. Case Threshing Machine Company (1918) 207 S. W. (Texas) 980; Montgomery v. Whitehead (1907) 40 Colo. 320, 90 Pac. 509, 11 L. R. A. (N. S.) 230; Swing v. Taylor & Crate (1911) 68 W. Va. 621, 70 S. E. 373; Town of Hinckley v. Kettle River Railroad Company (1900) 80 Minn. 32, 82 N. W. 1088; Robinson v. Phegley (1917) 84 Or. 124, 163 Pac. 1166; Champagne Lumber Co. v. Jahn (1909) 168 Fed. 510, 93 C. C. A. 532.

[16] Supra, n. 2.

[1] (Dec. 22, 1921) 36 Cal. App. Dec. 1058, 204 Pac. 403.

[2] 1 Bailey on Personal Injuries, 932, and cases cited; 5 Labatt's Master and Servant, 6214 ff.; 18 R. C. L. 604.

[3] Arkansas Midland R. Co. v. Pearson (1911) 98 Ark. 399, 135 S. W. 917, 34 L. R. A. (N. S.) 317; Barden v. Atlantic Coast Line R. Co. (1910)

stantial accord in treating such hospitals as charities, so that the liability of an employer in this class extends no further than its obligation to use due care in the selection of the attending physicians. These decisions are based upon the general American rule that a charity is not liable for the negligent acts of its agents, if it is not negligent in selecting them.[4]

To this class belong those employers which support their hospitals, partly by regular contributions from their employees, and partly by appropriations from their own treasuries. In such cases the hospital funds are nearly always administered apart from the employers' funds. Obviously a hospital supported in this fashion is not operated for profit, and the courts have had no difficulty in treating such a one as a charity, and thus limiting liability to that resulting from negligence in the selection of the physicians employed.[5]

In the typical case of the second class, the employees' regular contributions are paid over to a special hospital fund administered by the employer. The company hospital is maintained for the general benefit of all the employees, there being no further charges for treatment, and no financial profit to the employer. Decisions upon this state of facts are divided, the majority[6] preferring to treat the charitable feature as predominant, and limiting the liability of the employer for the negligent acts of the hospital employees. The courts of a few jurisdictions disagree with this ruling, holding the employer fully liable for negligent treatment of employee patients in such hospitals.[7]

The third class, into which the principal case falls upon the facts shown, consists of cases of the type where the corporation, by virtue of an agreement, either express or reasonably to be implied, collateral to the contract of employment, deducts regularly certain

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152 N. C. 318, 67 S. E. 971; Miller v. Beaver Hill Coal Co. (1906) 48 Ore. 136, 85 Pac. 502; Karabalis v. E. I. Dupont, etc., Co. (1921) 105 S. E. 755 (Va.); Fontanella v. N. Y. Cent. R. Co. (1919) 174 N. Y. Supp. 537.

[4] Adams v. University Hospital (1907) 122 Mo. App. 675, 99 S. W. 453; Barden v. Atlantic Coast Line R. Co., supra, n. 3; Roosen v. Brigham Hospital (1920) 235 Mass. 66, 126 N. E. 392, 14 Am. L. Rep. 563; Kidd v. Massachusetts Homeopathic Hospital (1921) 130 N. E. 55 (Mass.); Heriot's Hospital v. Ross (1846) 12 Clark & F. 507, 8 Eng. Rep. R. 1508; Hillyer v. St. Bartholemew's Hospital (1909) 2 K. B. 820, 78 L. J. K. B. (N. S.) 958; 7 Labatt's Master and Servant 7683, citing numerous cases. See also: Brown v. La Societe Francaise (1903) 138 Cal. 475, 71 Pac. 516; Thomas v. German Society (1914) 168 Cal. 183, 141 Pac. 1186; Stewart v. Calif. Medical, etc., Association (1918) 178 Cal. 418, 176 Pac. 46; and a discussion of the general rule in 6 California Law Review 307.

[5] Union Pac. R. Co. v. Artist (1894) 60 Fed. 365, 23 L. R. A. 581; Pierce v. Union Pac. R. Co. (1895) 66 Fed. 44; Carr v. Northern Pac. R. Co. (1921) 273 Fed. 511.

[6] Cummings v. Chicago & N. W. R. Co. (1889) 89 Ill. Ap. 199, 60 N. E. 51; Eighmy v. Union Pac. R. Co. (1895) 93 Iowa 538, 61 N. W. 1056, 27 L. R. A. 296; Nicholson v. Atchison, T. & S. F. R. Hospital Ass'n (1916) 97 Kan. 480, 155 Pac. 920, L. R. A. 1916D 1029.

[7] Coe v. Washington Mills (1889) 149 Mass. 543, 21 N. E. 966; Phillips v. St. Louis & S. F. R. Co. (1908) 211 Mo. 419, 111 S. W. 109, 124 Am. St. Rep. 786, 17 L. R. A. (N. S.) 1168.

sums from its employees' pay, returning such deductions to its own treasury. As its part of the agreement, the corporation maintains the hospital, which it retains under its own management; the employees have the right to necessary treatment without further charge. Presumably, any balance of income from the pay deductions, over the necessary expenses of the hospital maintenance, is retained by the corporation, which is thus in a position to derive a monetary profit from its hospital organization. It will be seen that this class is in its superficial features somewhat similar to the second class; but the distinction between them is something more than a mere matter of differences in accounting practice. Possibly an explanation by the defendant in the principal case to the effect that it handled hospital fund deductions in a separate account, would have enabled that case to be placed in the second class. No such explanation was made, and the court therefore properly followed the decisions[8] which have established the rule for the third class. These decisions have emphasized the duty assumed by the employer, toward the employees, and the probable profits derived by the employer, and have accordingly declined to consider that the charitable feature should govern. In the third class of cases, the employer has been held liable for the negligence of physicians employed in the company hospital.

From the economic point of view, it is difficult to see why company hospital services should, in any of these three types of cases, be regarded as charitable in their nature. Corporations operating great railway systems and large industrial plants are not organized for purposes of charity,[9] and charity is not a necessary incident of their activities. It seems much more logical to regard a service of health maintained by such an employer as a proper part of its plant, organized to care for the employees' health, paying for itself by its effect in augmenting their producing power. Indisputably, a well employee is a better paying asset than a sick or injured one. When the health of some thousands of workers is considered, there can be no question but that money spent in promoting the well-being of those thousands is an investment which returns a continuous profit to the employer, by reason of the greater working efficiency of the employees. From this viewpoint, the hospital maintained

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[8] Texas & P. Coal Co. v. Connaughten (1899) 20 Tex. Civ. App. 642, 50 S. W. 173; Texas and P. R. Co. v. McWain (1909) 57 Tex. Civ. App. 512, 124 S. W. 202; Richardson v. Carbon Hill Coal Co. (1893) 6 Wash. 52, 32 Pac. 1012, 20 L. R. A. 338; Sawdney v. Spokane Falls & N. R. Co. (1902) 30 Wash. 349, 70 Pac. 972, 94 Am. St. Rep. 880; Haggerty v. St. Louis, K. & N. W. R. Co. (1903) 100 Mo. App. 424, 74 S. W. 456; Wabash R. Co. v. Kelley (1899) 153 Ind. 119, 52 N. E. 152. See discussion, 5 Labatt on Master and Servant, 6214, 6216; and note, 17 L. R. A. (N. S.) 1168, to Phillips v. St. Louis & S. F. R. Co., n. 7, supra; 14 Ann. Cas. 749, and note.

[9] Zumwalt v. Texas C. R. Co. (1909) 56 Tex. Civ. App. 567, 132 S. W. 112; Powers v. Mass. Homeopathic Hospital (1901) 109 Fed. 294, 65 L. R. A. 372.

solely by the employer loses the aspect of a charity; while the hospital service to which the employees contribute appears all the more clearly to be a purely business arrangement.

It may be suggested further that any corporation which maintains a company hospital as a part of its plant derives profit therefrom because it is able directly to minimize damage suits for injuries to its workmen.[10] This suggestion is based upon the idea that a hospital service, as an integral part of the organization, is the employer's additional means of providing against the inevitable accidents of modern industry. The same ideas that have led to Workman's Compensation Acts,[11] which look upon industrial accidents as inevitable, and without making distinction as to fault between master and servant, provide insurance against the consequent economic losses, may be carried out on parallel lines to establish the employer's duty to provide, maintain, and be responsible for, an adequate hospital service for its employees. This duty is obviously a legal one, and is not related to any of the customary concepts of true charity.

A. B. M.

PUBLIC RECORDS: RIGHT OF INSPECTION: EVIDENCE: EXCLUSION OF PUBLIC RECORDS FROM INSPECTION BECAUSE OF PRIVILEGE —The recently aroused interest in municipal government has created a conviction that if a municipality is to function efficiently, complete information in regard to its activities must be available to its citizens. This is especially so where projects involving the management and expenditure of large amounts of capital are undertaken. The only method of obtaining such information is through inspection of the data and documents embodying the results of the work. The San Francisco Bureau of Municipal Research[1] undertook such an investigation of the Hetch-Hetchy project. But the city engineer refused to allow the inspection of

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[10] Haggerty v. St. Louis, K. & N. W. R. Co., n. 8, supra.

[11] Western Indemnity Co. v. Pillsbury (1915) 170 Cal. 686, 693, 151 Pac. 398; Western Metal Supply Co. v. Pillsbury (1916) 172 Cal. 407, 421, 156 Pac. 491. These cases, upholding the constitutionality of California's Workmen's Compensation Act, discuss the reasons for this and similar enactments in clear and persuasive language. Compare also the Report of the Wainwright Commission, quoted in Honnold on Workmen's Compensation, Sects. 1-5; Schneider on Workmen's Compensation, Sect. 1, and numerous authorities there cited.

[1] The Bureau is a non-profit corporation with its principal place of business in San Francisco. Its object is to secure "the highest possible degree of efficiency and economy in the transaction of public business, particularly in the municipality of San Francisco, through investigating, collecting, classifying, studying and interpreting facts concerning the powers, duties, actions, etc., of the several departments of government and making such information available to public officials and citizens. . . ." San Francisco Bureau of Municipal Research v. Board of Public Works (Dec. 9, 1921) 62 Cal. Dec. 636, 202 Pac. 884.